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NEWS RELEASE

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Summary of Cases Accepted During the Week of February 5, 2007

[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The statement of the issue or issues in each case set out below does not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#07-10 *People v. French*, S148845. (C050785; nonpublished opinion; Sacramento County Superior Court; 02F07203.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

#07-11 *People v. Hernandez*, S148974. (D047682; nonpublished opinion; San Diego County Superior Court; SCN195202.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

#07-12 *People v. Pardo*, S148914. (E039420; nonpublished opinion; San Bernardino County Superior Court; FMB006545.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

#07-13 *People v. Mvuemba*, S149247. (B186622; nonpublished opinion; Los Angeles County Superior Court; 056090.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

#07-14 *People v. Sandoval*, S148917. (B187977; nonpublished opinion; Los Angeles County Superior Court; BA280950.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses. The court limited review.

(over)

French, Hernandez, Mvuemba, Pardo, and Sandoval present the following issues in different factual contexts: (1) Did the trial court violate defendant's Sixth Amendment right to a jury trial, as interpreted in *Cunningham v. California* (Jan. 22, 2007, No. 05-6551) 549 U.S. __ [2007 WL 135687], by imposing an upper term sentence based on aggravating factors not found true by the jury? (2) If so, what is the proper remedy?

#07-15 *People v. Mentch, S148204.* (H028703; 143 Cal.App.4th 1461; Santa Cruz County Superior Court; 07429.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses. This case includes the following issues: (1) Should the trial court have instructed the jury, as requested, on the "primary caregiver" affirmative defense under the Compassionate Use Act (Health & Saf., Code, § 11362, subd. (e))? (2) If so, what is the standard of review for such instructional error? (3) Is the defendant's burden to raise a reasonable doubt regarding the compassionate use defense a burden of producing evidence under Evidence Code section 110 or a burden of proof under Evidence Code section 115? (4) Should the trial court instruct the jury on the defendant's burden to raise a reasonable doubt and, if so, how?

#07-16 *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd., S149257.* (C048668; 144 Cal.App.4th 1050.) Petition for review after the Court of Appeal denied petitions for writ of review of a decision of the Board. This case presents the following issue: May an employer who does not timely act on an injured worker's medical treatment request under the utilization review process set forth in Labor Code section 4610 nevertheless obtain review of the treatment request under the more general dispute resolution procedures set forth in Labor Code section 4062?

In the following cases, which present issues relating to the effect of *Cunningham v. California* (Jan. 22, 2007, No. 05-6551) 549 U.S. __ [2007 WL 135687] on California sentencing law, the court ordered briefing deferred pending further order of the court:

#07-17 *People v. Berry, S148112.* (B183555; nonpublished opinion; Los Angeles County Superior Court; KA064692.) Petitions for review after the Court of Appeal modified and affirmed judgments of conviction of criminal offenses.

#07-18 *People v. Coffman, S148743.* (B186332; nonpublished opinion; Ventura County Superior Court; 2003014877.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

#07-19 *People v. Crawford, S148445.* (A108538; nonpublished opinion; Alameda County Superior Court; C142465A.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

#07-20 *People v. Dunlap*, S148728. (F049177; nonpublished opinion; Kings County Superior Court; 05CM7144.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense.

#07-21 *People v. Dunson*, S148011. (B185018; nonpublished opinion; Los Angeles County Superior Court; MA027330.) Petitions for review after the Court of Appeal affirmed judgments of conviction of criminal offenses.

#07-22 *People v. Graves*, S149196. (F049345; nonpublished opinion; Fresno County Superior Court; F05905053-5.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

#07-23 *People v. Greenwood*, S148927. (B182924; nonpublished opinion; Los Angeles County Superior Court; YA056661.) Petition for review after the Court of Appeal reversed in part and affirmed in part a judgment of conviction of criminal offenses.

#07-24 *People v. Guerra*, S149149. (A112203; nonpublished opinion; Lake County Superior Court; CR906064.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

#07-25 *People v. Hernandez*, S148992. (F048747; nonpublished opinion; Stanislaus County Superior Court; 1023344.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

#07-26 *People v. Holdaway*, S149022. (B183720; nonpublished opinion; Los Angeles County Superior Court; NA057653.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense.

#07-27 *People v. Ludwick*, S148788. (G035624; nonpublished opinion; Orange County Superior Court; 04HF0395.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses.

#07-28 *People v. Plascencia*, S149251. (H029862; nonpublished opinion; Santa Clara County Superior Court; CC589323, CC590481.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

#07-29 *People v. Powell*, S148789. (B190245; nonpublished opinion; Los Angeles County Superior Court; BA278371.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

#07-30 *People v. Resto*, S149244. (H028483; nonpublished opinion; Monterey County Superior Court; SS042365A.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

#07-31 *People v. Siacksorn*, S149122. (C049116; nonpublished opinion; Sacramento County Superior Court; 03F07736.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

#07-32 *People v. Smith*, S148918. (E039170; nonpublished opinion; San Bernardino County Superior Court; FWV032461.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses.

#07-33 *People v. Thompson*, S148969. (B189042; nonpublished opinion; Los Angeles County Superior Court; YA061222.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

DISPOSITION

The following case was transferred for reconsideration in light of *People v. Kelly* (2006) 40 Cal.4th 106:

#06-84 *In re Michael R.*, S143293.

STATUS

#04-75 *People v. Towne*, S125677. The court ordered the parties to file supplemental briefs addressing the effect of *Cunningham v. California*, *supra*, on any of the issues presented by the case, including the following issues: (1) Do *Cunningham v. California*, *supra*, and *Almendarez-Torres v. United States* (1998) 523 U.S. 224, 239-247, permit the trial judge to sentence defendant to the upper term based on any or all of the following aggravating factors, without submitting them to a jury: the defendant's prior convictions as an adult are numerous and of increasing seriousness; the defendant has served a prior prison term; the defendant was on parole when the crime was committed; the defendant's prior performance on probation or parole was unsatisfactory (California Rules of Court, Rule 4.421, subds. (b)(2) – (b)(5))? (2) Is there any violation of the defendant's Sixth Amendment rights under *Cunningham v. California*, *supra*, if the defendant is eligible for the upper term based upon a single aggravating factor that has been established by means that satisfy the governing Sixth Amendment authorities — by, for example, a jury finding, the defendant's criminal history, or the defendant's admission — even if the trial judge relies on other aggravating factors (not established by such means) in exercising his or her discretion to select among the three sentences for which the defendant is eligible?

#07-03 *People v. Brookfield*, S147980. The court ordered the issues to be briefed and argued limited to the following issue: Is a violation of Penal Code section 246 (shooting at an inhabited dwelling) that is committed for the benefit of a criminal street gang (Pen. Code, § 186.22, subd. (b)(4)(B)) a “felony punishable by . . . imprisonment in the state prison for life” (Pen. Code, § 12022.53, subd. (a)(17)), such that the sentence for the violation may be enhanced under subdivisions (b) and (e) of section 12022.53 for a principal’s personal use of a firearm? (See *People v. Jefferson* (1999) 21 Cal.4th 86, 101; *People v. Briceno* (2004) 34 Cal.4th 451, 460, fn. 7.)

#07-04 *People v. Jones*, S148463. The court ordered the issues to be briefed and argued limited to the following issue: Is a violation of Penal Code section 246 (shooting at an inhabited dwelling) that is committed for the benefit of a criminal street gang (Pen. Code, § 186.22, subd. (b)(4)(B)) a “felony punishable by . . . imprisonment in the state prison for life” (Pen. Code, § 12022.53, subd. (a)(17)), such that the sentence for the violation may be enhanced under subdivision (c) of section Penal Code 12022.53 for the defendant’s personal and intentional discharge of a firearm? (See *People v. Jefferson* (1999) 21 Cal.4th 86, 101; *People v. Briceno* (2004) 34 Cal.4th 451, 460, fn. 7.)

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